

EDUARDO C. LAPENA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

Ponente: DE GUIA-SALVADOR, R., J.

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DE GUIA-SALVADOR, R., J.:

Filed pursuant to Rule 42 of the Rules of Court, the Petition for Review at bench seeks to reverse and set aside the 23 October 2013 Decision of the Regional Trial Court of Taguig City, Branch 153 (or "RTC"), in Criminal Case No. 151308-TG, which affirmed the 25 February 2013 Judgment of the Metropolitan Trial Court of Taguig City, Branch 74 (or "MeTC"), in Criminal Case No. 22641, finding SPO1 Eduardo C. Lapeña ("petitioner") guilty of the crime of Evasion Through Negligence.

The Indictment

An Information dated 19 February 2007 was filed by Assistant City Prosecutor Jaime A. Cubillo with the MeTC, charging petitioner with the crime of Evasion Through Negligence as defined and penalized under Article 224 of the Revised Penal Code (RPC) as follows:

"That on or about the 14[th] day of February 2007 in the City of Taguig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with the ordinary aggravating circumstance of nighttime, and being then a policeman, assigned as jail guard, hence, a public officer and in custody of several detainees, did then and there willfully, unlawfully, and feloniously, and without taking due care to fully exercise his duty as jail guard, failed to prevent the escape from his custody, one ALFREDO[2] REYES y VIRAY, a detention prisoner.

Contrary to law."

Upon arraignment, petitioner, duly assisted by Atty. Jose Poliwos, Jr., entered a plea of not guilty.

During the trial, the prosecution presented as witnesses PO3 Ehron Balauat ("PO3 BALAUAT") and PO2 Christopher Flores ("PO2 FLORES"), the police officers who investigated petitioner as to the escape of a detainee. For the defense, only petitioner testified.

The Facts

Version of the Prosecution

The Solicitor General summarized the evidence for the prosecution based on the testimonies of PO3 BALAUAT and PO2 FLORES, and the incident Report dated 15 February 2007,[3] thus:

"On 14 February 2007, petitioner ... was the jail officer at the Tuktukan Jail, Taguig Police Station, on duty for twenty-four (24) hours from 8:00 in the morning of February 14, 2007 to 8:00 in the morning of February 15, 2007. He was responsible for the custody of approximately thirty (30) to forty (40) detainees, including Alfred Reyes, a detention prisoner for the crime of Robbery pending before Branch 266, Regional Trial Court, Taguig City.

On said date, petitioner was busy attending to the other detainees who were cleaning the premises of the

detention cell, when Alfred Reyes was tasked to throw the trash at the garbage dump outside said detention cell. Thereafter, Alfred Reyes failed to return. Petitioner upon making a headcount of the detainees and realizing that Alfred Reyes was missing, executed an Incident Report of the escape.

Upon orders by Police Chief Inspector Edgardo B. Mendoza, [PO3 BALAUAT] and [PO2 FLORES] conducted an investigation on the matter, and on the basis of petitioner's own statement in his Incident Report, arrested petitioner for the commission of the crime as charged."

Version of the Defense

Petitioner points to PC/Insp. Edgardo B. Mendoza ("PC/Insp. MENDOZA"), his commanding officer, as the one directly responsible for the escape of detainee Alfred Reyes (or "detainee").

In the Appellant's Brief filed before the RTC, petitioner summed up his account of the incident leading to the escape of the detainee, thus:

"On 14 February 2007, a Wednesday, [Alfred] Reyes, a detainee was summoned by [PC/Insp. MENDOZA] to his office to do some errands for him. An occasion which takes place almost every day due to the orders of [PC/Insp. MENDOZA] to have [Alfred] Reyes do errands for him.

Being a subordinate of [PC/Insp. MENDOZA], [petitioner] had no recourse but to comply with the orders of his commanding officer.

On the said date, after [Alfred] Reyes failed to return to his detention cell, [petitioner] went to the office of [PC/Insp. MENDOZA] to look for him but to no avail. Despite this [petitioner] still went out of the Taguig City Police Station to look for [Alfred] Reyes. His effort to find the whereabouts of [Alfred] Reyes continued until 15 February 2007, a day after [Alfred] Reyes failed to return to his detention cell.

However, on the 16[th] of February 2007, [petitioner] was brought for inquest proceedings before the City Prosecutor's Office of Taguig."

RULING of the METC

After trial, the MeTC rendered a judgment finding petitioner guilty of the crime charged. It rejected petitioner's bare allegation that he had turned over custody of the detainee to PC/Insp. MENDOZA, and that the detainee made good his escape after PC/Insp. MENDOZA had ordered him to throw garbage outside the prison facility. The decretal portion of the Decision reads:

"WHEREFORE, there being proof beyond reasonable doubt that the [petitioner] is guilty of the crime of Evasion Through Negligence defined and punished under Art[icle] 244 of the Revised Penal Code, the Court hereby sentences him to suffer a penalty of imprisonment of Two (2) Months and one (1) day of Arresto Mayor as minimum to One (1) Year and one (1) day of Prision Correccional, as maximum, without temporary disqualification considering that the [petitioner] has retired from service.

Furnish the Public Prosecutor, the complaining witnesses, the [petitioner], his counsel and the Clerk of Court copies of this Decision.

SO ORDERED."

RULING of the RTC

On appeal, the RTC affirmed the MeTC's Decision, underscoring the fact that the MeTC relied not just on the testimonies of the prosecution witnesses but also on the Incident Report that petitioner himself submitted which established his own guilt of the crime charged. Thus:

"...from the Incident Report alone, it has already been established that detainee [Alfred] Reyes escaped and that

[petitioner] was the jail officer on duty on the date of the escape of the said detainee. As such jail officer, he is deemed to be the custodian of the detainees at the police station and as such, he was highly responsible in ensuring that every detainee is duly accounted for therein. The fact that [petitioner] was aware of his responsibility as custodian of the detainees was shown by the fact that he was the one who reported the escape of detainee [Alfred] Reyes.

x x x x x x x x

With respect to the first and second elements [of the crime charged], it is undisputed that [petitioner] is a public officer for he was a Senior Police Officer of the Philippine National Police assigned at Taguig City Police Station at Detention and Investigation Unit as Jailer and that he was in charge with the custody of Alfred Reyes who escaped from his detention cell.

The only question then to be determined is whether or not the [petitioner] was negligent in his duty.

x x x x x x x x

In the present case, the [petitioner] did not even offer any explanation as to the measure he has taken in order to ensure that the detainees under his custody will not escape while he was giving them some tasks to do. His statement in the Incident Report that he was busy with other detainees is already an indication and an admission that amidst his concentration to the other detainees, and he willingly allowed [Alfred Reyes] to stray from his concentration and vision. The [petitioner's] belated and, at best, uncorroborated excuse that he left [Alfred Reyes] under the care of [PC/Insp. MENDOZA] remains just that, an uncorroborated excuse especially considering the fact that he did not indicate that in his Incident Report.

x x x x x x x x"

The Issue

In support of the grant of the present Petition for Review, petitioner raises a lone issue:

WHETHER THE [RTC] GRAVELY ERRED IN AFFIRMING THE CONVICTION OF THE PETITIONER DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[4]

Petitioner principally assails the factual finding of the MeTC and the RTC that he was negligent in the performance of his official duties, resulting in the escape of the detainee. He contends that he recorded in the prison logbook the instances when PC/Insp. MENDOZA had summoned the detainee to clean and throw garbage, including the date the latter escaped.[5] He thus argues that PC/Insp. MENDOZA should be the only one held accountable for the escape of the detainee.

The Solicitor General counters that petitioner admitted the presence of the first and second elements of the crime charged, i.e., he is a public officer and he was charged with the custody of the detainee. With his admission of the second element, petitioner's argument that custody of the detainee at the time of the latter's escape was transferred to PC/Insp. MENDOZA is unavailing. Besides, petitioner failed to present the logbook where he had allegedly recorded that PC/Insp. MENDOZA summoned the detainee to throw garbage on the date the latter escaped. Finally, the element of negligence was established by the Incident Report dated 15 February 2007.

The Court's Ruling

The petition lacks merit.

Evasion through Negligence is defined and penalized under Article 224 of the RPC, thus:

"ART. 224. Evasion through negligence. If the evasion of the prisoner shall have taken place through the negligence of the officer charged with the conveyance or custody of the escaping prisoner, said officer shall suffer the penalties of arresto mayor in its maximum period to prision correccional in its minimum period and

temporary special disqualification."

The elements of the crime under the above-quoted article are:

a)

that the offender is a public officer;

b)

that he is charged with the conveyance or custody of a prisoner, either detention prisoner or prisoner by final judgment; and

c)

that such prisoner escapes through his negligence.[6]

All these elements were established by the prosecution beyond reasonable doubt.

First and second elements
were established by the
judicial admission of
petitioner, and the credible
testimonies of PO2 FLORES
and PO3 BALAUAT

Petitioner acknowledged that he is a public officer[7] and that he was charged with the custody of the detainee, a detention prisoner.[8] These statements of petitioner constitute judicial admissions within the ambit of Section 4 of Rule 129 of the Rules of Court, viz.:

"Sec. 4. Judicial admissions. – An admission, verbal or written, made by the party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made."

Without any attempt on the part of the petitioner to contradict his admissions in the Petition for Review, the first and second elements of the crime charged are deemed established, thus doing away with the need for the prosecution to present evidence to prove the same.

In any event, PO2 FLORES testified that only one jailer was assigned for 24 hours of each day at the detention cell of the Taguig Police Station.[9] Petitioner was the on-duty jailer from 8:00 a.m. of 14 February 2007 to 8:00 a.m. of the following day. [10] PO3 BALAUAT testified that petitioner was the police officer in charge with the custody of the inmates inside the Tuktukan Jail at the time the detainee escaped.[11] Moreover, on 14 February 2007, the sole prison gate through which entry to and exit from the detention facility may be made was under petitioner's control.[12]

PO2 FLORES and PO3 BALAUAT are both police officers who are presumed to have performed their duties in a regular manner. In the absence of evidence of ill-motive that could overcome such presumption of regularity, their testimonies are entitled to full faith and credence.

Petitioner acted negligently
when he allowed the detainee
Reyes to get out of the cell at
nighttime (6:30 p.m.), and

permitted him to throw
garbage outside the prison
cell

For his defense, petitioner vehemently denies that his negligence precipitated the escape of the detainee. He points to PC/Insp. MENDOZA as the law enforcer whose negligence led to the disappearance of the detainee. Petitioner further contends that the testimonies of PO2 FLORES and PO3 BALAUAT as to his negligent acts leading to the escape of the detainee, and the affidavit of PC/Insp. MENDOZA who did not testify before the MeTC, are all hearsay evidence.

We disagree.

The gravamen of the crime of Evasion Through Negligence is the positive carelessness that is short of deliberate non-performance of the accused' duties as guard of a prisoner.[13] This means definite laxity that amounts to a deliberate non-performance of duty by the guard.[14]

Corollarily, the rules and regulations of the Bureau of Jail Management and Penology (BJMP) require that all inmates must be kept inside their cells after visiting hours. During night time, compelling reasons and/or emergency situations must exist before the inmates can be allowed to leave their cells.[15]

In the case at bar, the Incident Report dated 15 February 2007[16] prepared and submitted by petitioner to the Chief, Criminal Investigation and Detection Unit (CIDU), Taguig Police Station, showed that at 6:30 p.m. of 14 February 2007, the detainee was directed to throw garbage outside the prison facility, thus:

"01. This pertains to the above captioned subject that was discovered missing of detainee one ALFRED REYES Y VIRAY, 27y/o, married, born on April 16, 1980 at Taguig and a resident of #1 Quasay Sat., Zone 1, Signal Village, Taguig City with Criminal Case No. 134420 on or about 7:00 p.m. February 14, 2007.

02. That prior to the incident at around 6:30 p.m. of said date, the undersigned was busy attending other detainees who are cleaning the premises inside the detention cell. Subject Alfred Reyes was tasked to throw the trash at the garbage dump located at the premises of City Hall, Taguig City. Thereafter he failed to return at the detention cell.[17]

03. The undersigned exhausted effort to locate the said above named detainee but it prove futile.

04. For info."

The Incident Report dated 15 February 2007 is a public document as defined under Section 19(a),[18] Rule 132 of the Rules of Court having been filed by the petitioner in the performance of his functions as a jail officer. As such, the Incident Report is a prima facie evidence of the facts stated therein.[19] There being no evidence proffered by petitioner to overcome such presumption, the Incident Report suffices to sustain the proposition it supports or to establish the fact[20] that the detainee was tasked to throw the trash at the garbage dump located at the premises of City Hall, Taguig City, at about 6:30 p.m. before he completely disappeared. In allowing the detainee to get out of his prison cell at 6:30 p.m., petitioner violated the BJMP rules and regulation. Certainly, the presence of garbage inside the cell does not constitute compelling reason or emergency situation justifying petitioner's act of allowing the detainee to leave his cell at night time.

Apart from violating the BJMP rules and regulation on keeping prisoners inside the prison cell at night time, petitioner virtually paved the way for the eventual escape of the detainee when he allowed the latter to proceed outside the jail premises on his own, sans any precautionary measure to insure that no prison break will occur. Indeed, it is the duty of any police officer having custody of a prisoner to take necessary precautions to assure the absence of any means of escape. Petitioner's failure to undertake such precautions renders his act one of definite

laxity or negligence amounting to deliberate non-performance of duty.[21]

Petitioner's defense that he transferred the custody of the detainee to PC/Insp. MANZANO on the date the inmate made his escape is a mere unsubstantial allegation. The alleged prison logbook where he recorded the instances, including the very day of the escape, where PC/Insp. MANZANO directed the detainee to throw garbage outside the prison facility, was not presented in evidence. Petitioner's failure to name the investigator to whom he submitted the said logbook, and the absence of any attempt on his part to avail of the court processes to ensure the production of the said logbook impels Us to reject his defense as a travesty. Notably, PO2 FLORES and PO3 BALAUAT testified that they investigated the escape of the detainee,[22] yet the defense never compelled them to produce the alleged logbook nor questioned them regarding that matter during their cross-examination.

On his contention that he was merely following an order from a superior officer, petitioner is fully aware that the alleged practice of PC/Insp. MENDOZA of making the detainee clean and throw garbage outside the prison is contrary to prison rules and regulations.[23] Petitioner could not be compelled to follow an illegal order by his superior officer. A person who acts in obedience to an order issued by a superior incurs no criminal liability only when the order is for some lawful purpose.[24]

Finally, in not disturbing the findings of the trial court, uppermost in the mind of the Court is the long and well settled rule in criminal jurisprudence that when the issue is one of credibility of witnesses, the appellate court will normally not disturb the factual findings of the trial court.[25] This rule is anchored on the fact that the trial court judge is in a better position to determine the issue of credibility since he has the opportunity to observe the deportment of the witness during the trial. Hence, unless it overlooked, misunderstood or misapplied some fact or circumstance of weight and substance which will alter the appealed decision or affect the result of the case,[26] the trial court's factual findings—including the credibility of witnesses, the probative weight of their testimonies, the conclusions drawn from such factual findings—are accorded great respect and even conclusive effect on appeal.[27]

WHEREFORE, the Petition for Review is DENIED for lack of merit, and the 23 October 2013 Decision of the Regional Trial Court of Pasig City, Branch 153, in Criminal Case No. 151308-TG, is AFFIRMED.

SO ORDERED.

Rosario, and Dimagiba, JJ., concur.

[1] Also referred to as "Lapeña".

[2] Also referred to as "Alfred".

[3] Exhibit "F".

[4] Rollo, p. 13.

[5] Rollo, p. 14. The logbook allegedly could no longer be found after petitioner surrendered the same to the investigator (Page 5 of the Motion for Reconsideration dated March 14, 2013, Rollo, p. 40).

[6] *Rodillas v. Sandiganbayan*, G.R. No. L-58652, 20 May 1988 .

[7] During his testimony on 02 September 2010, petitioner established that he was a Jail Officer at the Taguig Police Station when one of the detention prisoners, Alfred Reyes, escape from prison (Rollo, pp. 104-105).

[8] Paragraph 18 of the Petition for Review. Rollo, p. 14.

[9] Rollo, p. 84.

[10] Rollo, pp. 91-92.

[11] Rollo, pp. 65.

[12] Rollo, p. 66.

[13] Reyes, Revised Penal Code, Book II 15[th] edition, p. 419, citing *People v. Reyes*, 59 O.G. 6664.

[14] *Rodillas v. Sandiganbayan*, G.R. No. L-58652, 20 May 1988.

[15] *Civil Service Commission v. Almojuela*, G.R. No. 194368, 02 April 2013.

[16] Exhibit "F".

[17] Emphasis added.

[18] Sec. 19 . Classes of Documents. — For the purpose of their presentation evidence, documents are either public or private.

Public documents are:

(a)The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country; x x x

[19] Section 23, Rule 132 of the Rules of Court reads:

"Sec. 23. Public documents as evidence.— Documents consisting of entries in public records made in the performance of a duty by a public officer are prima facie evidence of the facts stated therein. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter."

[20] *Bautista v. Court of Appeals*, G.R. No. 143375, 06 July 2001, citing *Salonga v. Cruz Pano*, G.R. No. 59524, 18 February 1985, 134 SCRA 438.

[21] *Rodillas v. Sandiganbayan*, *supra*.

[22] Rollo, pp. 68 and 79

[23] Rollo, p. 14.

[24] Article 11, paragraph 6, RPC.

[25] *People vs. Agliday*, G.R. No. 140794, October 16, 2000

[26] *People vs. Magalona*, G.R. No. 143294, July 17, 2003

[27] *People vs. Diu*, G.R. No. 201449, April 3, 2013

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